

**Myles Dannhausen, Sr.  
7592 North Elm Road  
Egg Harbor, WI 54209**

November 18, 2003

TO: DEPARTMENT OF NATURAL RESOURCES  
101 S. WEBSTER STRET BOX 7921  
MADISON, WI 53707-7921

SUB: NR115 LISTENING SESSION COMMENTS

Please record my opposition to all of the proposals listed in your basic comment sheet and include the following in your public comment record:

- ! The question is not whether the Shoreland Zoning Ordinance should be revised. Rather, the question is what governmental tools should be used to promote shoreline uses that are in the best interest of our State and the economic enterprises that serve our state, most importantly tourism. Zoning is a development tool, not a conservation tool.

I live in the Town of Egg Harbor which historically has avoided zoning. Their minimum requirement is 1 ½ acres per residential unit. Any exceptions result in public hearings and the town fathers have been more than successful in their efforts to combat both excessive and objectionable development.

While this system is not perfect it seems to be more successful at curbing development than the complicated Zoning systems installed in most other Door County communities. The simple fact is that Zoning gives a blank check to development as long as its terms are complied with and creates the means by which developers can stretch the envelope.

- 2 Many of the most historic and valued structures in Door County would not comply with current zoning, shoreline or otherwise.

Where these structures were constructed along the shoreline they have become true tourist attractions and offer the public unparalleled access to the natural wonders of the Door County shoreline. They include light houses, piers and structures that were formerly private property. A public policy that uniformly precludes or restricts innovative uses of our water front is not conservation. It is a concession to one narrow view of how our natural resources should be accessed.

- 3 The problem with shoreline development in Door County is not the need to restrict private uses of this land. Most of the shoreline is already in private hands and not accessible by the public.

The simple issue is the unwillingness of state and local government to expend the funds necessary to guarantee public access and use of our waterfront resource. Simply put, a massive effort to acquire shoreline property for use by the public should be the paramount objective of public policy. In our history, whenever this has been done the results have been well worth the investment.

- 4      You indicate that shoreline zoning has not been revised in 30 years. This illustrates one of the most serious flaws in any Zoning mechanism. As soon as any revisions are made developers will stretch the provisions, litigation will further complicate the process and a new host of problems will be created requiring yet another revision.

Several times in your revision proposals you refer to “best practices” advisories contained in other parts of state governance. Progressive governance suggests that regulation should move away from set in stone regulation and more towards an evolving set of “best practices.” I recently visited an area where restaurants have to post their rating on a scale of A,B,C against a series of “best practices” that are evaluated periodically. Anything less than an A is an invitation for disaster for a restaurant enterprise.

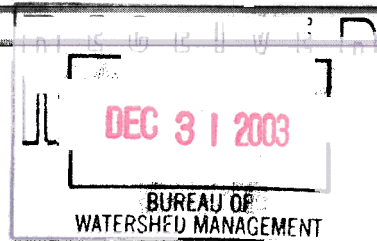
The same could be true for shoreline zoning. Give property owners and developers the flexibility to incorporate the “best” into their plans and you provide an incentive to excel at conservation.

To be sure, there is a need to regulate development that has the potential for disastrous consequences to our environment and our natural resources. Unfortunately, ascertaining these consequences is constantly subject to new scientific information. Witness the recent study that suggested that the decline in Lake Trout is not the result of over fishing. Rather it resulted from pollution on the lake bed. It is more important to have a system that responds immediately to scientific information as it develops than to institutionalize interest group concerns that may eventually become “old wife’s tales.”

Let’s say, for example, that a certain kind of fish required a particular type of structure to thrive or reproduce. A “best practices” approach might spur an owner to do something positive that he would not otherwise do under the zoning you have proposed.

Respectfully,

Myles Dannhausen, Sr.



From: TERRI DOPP-PAUKSTAT  
Subject: Fwd: My views on NR115 changes.

Attached are my comments on the proposals to update NR 115. I have written my comments out here as they relate to each section of the long form comment sheet. Hope this is understandable. Thanks for taking the time to consider them all.

Section I--I am in favor of a 35 foot primary buffer and a 40 foot secondary buffer. This is a rather radical change and I don't think we should push too far at once.

Structures allowed within either buffer should be those needed for access and erosion control only. I also feel that the viewing corridor should be 30% of the lot width with a maximum of 30 feet total. You can accomplish a lot in 30 feet, it does not need to be any wider than that. There should probably be some consideration for sites that are wider than 200 feet. Access should be limited to the 30% viewing corridor.

Section II--I am unsure of how a pier would even apply within the water setback area! Aren't they by definition a structure that would be placed on lakebed?

I think access should be allowed including that for disabled individuals provided it is the least that is necessary to get to the water, and disturbs the area minimally.

I do not want to have to make sure someone removes their canoe from the shoreline each year, so temporary items used on the water or shoreline should be permitted as well, but they should be confined to the viewing corridor. Open fences are OK as well.

I think boathouses should not be permitted except if they meet the water and all other setbacks. If they are allowed, they should be very limited in size and height. Don't want to regulate color or screening, too difficult.

Section III--Unfortunately, now that we are getting good at it, I don't want to abandon the 50% rule. I think it has been rather effective at limiting construction that is non-conforming because of the water setback. I think that counting structural components would be just as difficult if not more difficult to do. If a change is made, what happens to all those structures that have used their 50% limit up already? Do we have to go back and try to discern how many structural members have already been replaced?? I am also not in favor of unlimited repair and maintenance of non-conforming structures. Many places could be fixed up almost beyond recognition without some kind of limit on value etc.

I do like limiting or prohibiting the expansion of both accessory and principal structures that are very close to the water.

How would structures that "straddle" boundaries be handled? I'd suggest if any portion extends into a buffer zone that the whole structure be treated as if it were in that zone.

I am also in favor of limited the footprint of structures within buffer zones, and having a minimum structure to start with, however that is where I think the 50% rule does a good job too. If you don't have much to start with, you don't end up with too much either.

Again, I think the major reconstruction options seem just as cumbersome and hard to enforce as the 50% rule.

I think the restoration of primary and secondary buffers should be triggered with any improvements to a structure (both non-conforming and conforming) or construction of a new home, however I admit it will be very difficult to administer and regulate this provision.

Section IV-- I think all new lots should be at least 100 feet wide and 20,000 sq. ft. Anything smaller just does not accommodate today's homes and accessory buildings. I also agree that lots should have at least 5,000 sq. ft. of buildable area. Again today's construction needs at least that much room, and that's not counting on area for a septic system.

Section V--I like the option of one dwelling unit requiring the minimum lot size for SF development, and then each additional unit requiring additional square footage and frontage. However, I am unsure of how much more is needed. I tend to think the 7500 sq. ft. and 50 feet of frontage for each unit is better than only 2000 sq. ft. and 10 feet of frontage, which seems rather meager.

I think multiple VAC's would be nice for the homeowner, but a pain in the you know what to administer.

Section VI--I think conservation subdivisions are good in theory but no one seems to put them into practice! I don't think they should get to set aside wetland and floodplain areas that they could not develop anyway as their conservation area! That's rewarding someone for something they have to do anyway. But I do not have any clear answers on this one.

I think a drastically reduced water frontage requirement should be allowed only for multi-family projects when a portion of the water front is included in the conservation easement.

Section VII--I think NC lots should not be sold separately once they are in the same ownership, regardless of whether they are already developed or not. Mitigation standards should apply here the same as they would apply to other construction projects.

Non-conforming lots will always be difficult to build on and should be phased out whenever possible.

I still think new construction that meets setbacks should have to restore the buffer zones decided upon, or the buffers will do little to no good around the lake, being restored in relatively few places.

I like allowing some kind of building envelope by reducing road or rear yard setbacks and then the water until a minimum area is realized. 30 feet in depth isn't much, but it should accommodate a small home and provide reasonable use. If the allowable building envelope would encroach into the primary buffer then I think 30 feet is too much allowable depth, and those parcels should probably be subject to individual review by Variance. Square footage of the footprint limitations already set in the section that covers the expansion of non-conforming structures should apply to new structures as well.

I think setback averaging should apply but in no case less than the primary buffer depth decided upon. I even think it could be 50 feet maximum reduced setback if the 35 foot buffer is chosen. This protects the primary buffer and allows 15 feet around the structure for safety/common sense of tree removal close to a home. Any structures that would be closer than that could be considered on a case by case basis via variance and additional conditions placed on those projects if approved that provide similar protections at the reduced setback.

I think that the conditions listed in 7p are good with the addition of a height maximum. Restoration of vegetative buffers should address the screening portion, and I do not want to any way limit someone's color choices.

Section VIII--I do not think retaining walls should be permitted at all unless proof is provided via the variance procedure that no other alternative exists.

Section IX--I do support the limiting of impervious surface on shoreland properties, I just think it will be hard to interpret and administer.

Section X--I think the primary buffer should be restored, and that requirement not traded away for other less beneficial practices. I also think trying to grade the potential adverse impacts of a project would be difficult at best. I thought the goal was to make this code easier to understand and administer!

Section XI--I support exempting agricultural practices if they will be covered in another Chapter. I think that the code that covers agricultural practices should also cover the aquaculture ponds because it seems like that is closely related and where it should be covered. Obviously trees should be allowed to be removed from drainage ditches for maintenance purposes, and to the minimum degree necessary to perform proper maintenance.

I think open fences with a maximum height of 6 feet in residential areas, and 10 feet in agricultural areas should be permitted.

I believe that setback relaxations for agricultural structures should be considered on a case by case basis via the variance process and the public forum is the place to demonstrate the advantages of such a structure and the limitations of the site to locate it elsewhere. My same comments apply to 11m through 11p.

Section XII--I find it hard to believe that there is that much timber waiting to be harvested that is located within 35 feet of a navigable body of water, but harvest of it should be exempted if there is a plan for harvest and re-vegetation of the site, and that plan meets the minimums of the BMP manual, and is approved by a forester. Same goes for other habitat restorations. Not all sites are conducive to forest vegetation.

Section XIII--I think campgrounds should have to comply with the same buffer strip requirements as other developments, and that viewing access corridors should be limited to 30% of the lot with a maximum of 30 feet in every 100 feet just like SF development. Minimum lot size and square footage/unit requirements are a good idea as well. Setbacks and impervious surface requirements should apply to campgrounds the same as other developments.

I do not care to start to policing campgrounds to make sure units are removed to meet the maximum stay requirements. I do think they should be kept roadworthy and licensed if they truly are a mobile camping unit.

I think public access sites should meet the requirements of the code as much as is practical. Some provisions should probably be made for them because they are usually located on less than desirable and sometimes marginal land for development. But care should be taken to adhere to the code requirements where possible and pre-cautions taken to protect the water resource where strict adherence is not

possible. Again a variance procedure may be the best way to insure and monitor this.

I think a height limitation should be in place throughout the shoreland area. For structures of greater than the maximum height decided upon, a greater setback from the water should be required. i.e. for each foot of height over a maximum of 30 to 40 feet, and additional 2 feet of setback from the ordinary high water mark should be required.

If an access site is not open to the public, relaxation of any standards should be hard to obtain through the variance process.

Marinas should have to comply with the same standards as other enterprises placed in the shoreland area.

Section XIV--Not sure I understand what the provisions are now so cannot comment.

Section XV--I am concerned that retaining walls will not be regulated under the changes proposed to NR 115. All structures should be kept out of the near shore area except for those that are absolutely necessary like access walkways. Very few sites truly need a retaining wall to control erosion. Vegetative buffers and re-vegetation of existing sites will go a very long ways towards controlling run-off and erosion into our waterways. Limited building and land disturbance within the building setback area will also prevent a lot of problems.

Education of the public on changes and their benefit to the water resources as well as landowner promotion of these ideas will be an essential step in the adoption and implementation of any changes.

## XVI. DOCUMENTATION FOR THE PUBLIC RECORD

Comments from the listening sessions will be accepted until December 31, 2003. Comments can be emailed to Toni Herkert, Shoreland Management Team Leader at [Toni.Herkert@dnr.state.wi.us](mailto:Toni.Herkert@dnr.state.wi.us) or comments can be mailed to her at DNR WT/2, Box 7921, Madison, WI 53707-7921. If you have questions, Toni can be contacted at (608) 266-0161. More detailed information on the Shoreland Management Program revision is available at: [www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm](http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm)

If you would like your comments to be part of the public record for the NR115 rule revision, please, at a minimum, provide your name. The remaining information is voluntary. Please print legibly.

Date: TERRI DOPP PAUKSTAT  
Name: 12-22-03  
Address: WAUSHARA Co. ZONING  
PO Box 1109 WAUTOMA, WI 54982  
Phone: (920) 787-0453  
Email: terri.courthouse@co.waushara.wi.us

Would you like to receive email updates about the status of the NR 115 revision process?

☒ Yes ☐ No

## **Douglas County Association of Lakes and Streams** **(DCALS)**

Recommendations on NR115

Nov. 6, 2003

DCALS supports the effort to revise the shoreland regulations. We have some concerns after studying the final version of the NR 115 revision. DCALS is making the assumption that the proposal applies only to newly created boathouses, lots, structures, etc.

**General thoughts:** The quality of Wisconsin lakes is decreasing. Development and usage are related to this decline. NR 115 addresses many of these issues. "The DNR is Wisconsin's lead agency for protecting and improving natural resources and the environment for enjoyment today and tomorrow" (mission statement). Therefore, an NR 115 revision that in any way leads to a relaxation of the current regulations is contrary to the public interest and the purpose and mission of the Wisconsin Department of Natural Resources.

### **I. Shoreland Buffers -vote Proposal A**

Buffers improve water quality. The larger the buffer, the more protection the lakes will receive. The main concern is that whatever proposal is chosen, it will not be enforceable because there is no definition of a buffer. The committee should consider using a definition similar to Washburn County or Douglas County which actually spells out the number of plants per square foot (Shoreland Buffer Planting Standards) or writing a definition that makes a buffer similar to the average vegetation on an undeveloped lot on the same lake. The definition is a must.

The problem is that the current law has not been enforced because of the lack of definition. This time around the committee needs to correct this error.

Question: In the present language form, what is to prevent a person from calling a restoration complete by merely replacing the vegetation with a native grass and planting only a couple trees after the person clear cuts with use of a bulldozer on the whole buffer area? (After he pays a fine.)

### **Viewing Access Corridor -Vote Proposal A**

The VAC should not be maintained as a natural area with only some (not all) trees allowed to be removed in order to increase the view. Grass lawns should be discouraged.

### **II. Ordinary High Water Mark (OHWM) Setbacks-Vote Proposal A**

Boathouses should be at the setback because very few people actually use boathouses to store boats. They are used primarily for storage. Secondly, if you believe in the science of impervious surfaces, there is no greater offender than boathouses. The closer the structure is to water the greater is the negative impact

We tackled this issue a few years ago in Wascott Township in Douglas County and found the science to be so overwhelmingly against boathouses that the prohibition of boathouses was easily passed at the county level.

For the structures allowed in the setback area (stairways, walkways, etc.), consideration should be given to listing the maximum width allowed in order to prevent large impervious surface totals.

Structure definition: A concern exists because DCALS feels that "retaining walls" should not be included as an exception. Douglas County considers them as structures. Sometimes they are huge and elaborate. They are covered separately in Section VIII and this should be referenced here.

### **III. Nonconforming Structures-vote Proposal A in all cases**

"The law seeks to restrict rather than increase nonconforming uses and to eliminate such uses as speedily as possible" (Village of Menomonee Falls vs. Veierstahler). This legal principle must be upheld.

Question: The current law reads "over the life of the structure". When documentation is present that proves someone has already used up 100% of their current right to expand 50% of the equalized assessed value and these people are still under proposed 1500 square feet, will these people be allowed to expand again? DCALS feels the answer has to be "no" or this proposal will be deemed totally unfair.

All “Proposal A’s” have to be chosen in this section if there is going to be any benefit to the lakes to compensate for the relaxation of the rules regarding the unlimited repair and maintenance of nonconforming structures and the allowance of decks and patios in the setback area.

Structural Component definition – Should include “basements” with foundation. Otherwise a lawyer will argue that basements are exempt because they are the same as a foundation. No more than 25% of the basement should be allowed to be replaced without the building being moved back to a conforming position.

#### **Major Reconstruction- vote Proposal A**

Proposal A must to be chosen for the definition of “Major Reconstruction” in order to have any restrictions on nonconforming structures. (The 25% should also apply to basements) As currently written, it appears as though an individual can make 25% improvements year after year and ultimately rebuild the whole structure. A 25% structural replacement should be allowed “over the life of the structure” only. Anything else is contrary to Wisconsin court case law and the mission of the DNR. The definition is meaningless if allowed to stand as is.

The phrase “50% of the linear perimeter” is confusing. Do you mean 50% of the structural components or 50% of the walls excluding the structural components? DCALS feels this has to be clarified.

#### **IV. Minimum Lot Size-vote Proposal A**

Proposal A is the best answer because if 65 ft. lots are allowed, the negative impact from the added development and usage greatly outweighs the positive benefit of a central sewer system. Sanitary sewer systems should be used to improve the conditions not reduce them. Development on legal nonconforming 65 ft. lots will still occur by use of the options for the stepped approach. Sewered 100 ft. lots are far superior to sewer 65 ft. lots.

##### **Minimum Buildable Area – vote Proposal A**

The buildable area should not include the area that is in the primary buffer.

#### **V. Minimum Lot Size- Multiple Family Homes, Duplexes and Commercial Development**

We favor the proposal.

#### **VI. Lot Size Reduction for Conservation Development**

DCALS believes a minimum size should be established for a Conservation Development. This should be reserved for multiple dwellings on at least 20 acres.

“Keyhole Developments” should be addressed in this section or some other section. A maximum number of off lake dwellings (four) should be established for each conforming access lot. The backlots should be larger and the access lot should not have any buildings on it (Douglas County Ordinance).

#### **VII. OHWM Setback Reductions**

DCALS strongly supports the “merger of title” concept”. However, the proposal hinges on the definition of “abutting”. Any good lawyer will argue that using the term “abutting” makes all lots on the backside of an access road buildable because they are not abutting. Many lots are long and narrow (nonconforming) and go away from the lake. They are in one person’s name. Generally they are bisected with an access road (often blacktop) parallel to the water. Taxes have been paid as though it is one lot. The lot is in common ownership. Is the backlot “abutting”? It has to be. Otherwise, the proposal is creating a huge number of new lots for development in the second tier region. Using the term “abutting” will make nonconforming lots more nonconforming when the lawyer argues that the two lots are not “abutting. One alternative to prevent this may be to say “ the backlot has to be recorded in separate ownership before the county shoreland ordinance took effect”. This is a huge problem and has to be addressed somehow. Is the problem with the term “abutting”? DCALS feels this confusion has to be addressed.

New construction should never be allowed in the primary buffer area, even though DCALS supports your new options for substandard lots.



### **VIII. Filling, Grading, Lagooning, Dredging, Ditching and Excavating**

The use of rip rap should be addressed here. Many lakeshore property owners are using riprap to make their beach appear "neat and tidy". Chapter 30 could be referenced here.

Retaining Walls; This section is poor because it appears as though the property owner is in complete control of the process. There should be an approval process for retaining walls.

### **IX. Impervious Surface Limits-vote Proposal A**

20% is reasonable even though studies show the trigger point for water deterioration to be 8-12% of the watershed. It is the only way to control small nonconforming lots. This has to be kept in the final draft.

### **X. Mitigation Provisions**

We strongly support mitigation.

### **XI. Agriculture**

We favor this section,

### **XII. Forestry**

"Forest Land" definition- What is to prevent a shoreline owner from calling their primary buffer area "forest land" because it is "valuable for wildlife production" and therefore be exempt from NR 115 buffer standards? DCALS feels this confusion has to be addressed.

### **XIII. Recreational Areas-Vote Proposal A**

Campgrounds are for temporary visits. A thirty day maximum stay is more than adequate. People who plan to stay for more than thirty days should find locations outside the shoreland area. Campgrounds are high use, high density developments that negatively impact neighbors, water quality, and the environment. Campgrounds should not receive preferential treatment over the surrounding property owners.

This section is excellent. Do not allow relaxation of any kind.

### **XIV. Sanitary Regulations**

This section may not be necessary because it is all covered under Comm. 83.

**Summary Thoughts:** The potential exists for a improvement in the NR 115 rules if the appropriate proposal are chosen and written in the final draft. Essential items include passing Proposal A under the "Major Reconstruction" definition and ensuring that the limit on impervious surfaces is kept.

DCALS is greatly disturbed that it appears as though the momentum is to allow 25% reconstruction of structural members (major reconstruction) over and over rather than once in a lifetime in both the primary and secondary buffer areas. The change to 50% of the linear perimeter is also unacceptable. If these items pass, there is going to be no benefit to the new NR 115 revision. These items greatly diminish the protection of lakes. DCALS is opposed to unlimited replacement of structural members of nonconforming structures.

The Douglas County Association of Lakes and Streams requests that the DNR continue to receive input in an open fashion, consider seriously the 35 years of court case law related to shoreland regulations, and use as a foundation for all decisions the goal and mission statement of its own agency.

Thank you for considering our input.

## Wagner, Carmen (DNR)

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**From:** mdresen@uwsp.edu  
**Sent:** Monday, December 22, 2003 2:28 PM  
**To:** Herkert, Toni  
**Cc:** Wagner, Carmen (DNR)  
**Subject:** Comments on NR115 proposal

Toni,

Please include my comments in the attached file in the official record on this matter.

*Michael D. Dresen*, Director  
Center for Land Use Education  
College of Natural Resources  
University of Wisconsin - Stevens Point  
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## I. SHORELAND BUFFERS

**PROPOSAL: Primary Buffer.** A buffer of native shoreland vegetation, parallel to the OHWM, and extending inland from the OHWM. Within the primary buffer, the following provisions apply:

1. One viewing and access corridor (VAC) to the water allowed for each property.

**Comment:** Limiting each platted parcel to a single VAC maintains the functional integrity of the remaining buffer.

2. Vegetation removal prohibited, except for control of exotic or invasive species, removal of diseased vegetation, removal of trees or shrubs severely damaged by high winds, or because of an imminent safety hazard.
3. Any vegetation removal requires replacement with native vegetation except for selective removal in VAC.

**Secondary Buffer.** A vegetated buffer extending inland from the primary buffer to the minimum OHWM setback line. Within the secondary buffer, the following provisions apply:

1. Maintenance of a vegetated buffer required. Turf, groundcovers, or native ground layer vegetation would qualify as a vegetated buffer.
2. Removal of trees and shrubs allowed.

**Comment:** The proposal is a retreat from the current rule which at least requires adherence to sound water quality protection, forestry and soil conservation practices in this sensitive area. The proposal should require compliance with standardized and commonly accepted best management practices for erosion control and forest management.

### Buffer Depth:

#### Proposal A

50-foot primary buffer + 25 foot secondary buffer =  
75-foot OHWM setback

**Comment:** Significant research, much of it summarized in DNR publications, concludes that even the 50-foot buffer depth proposed here is insufficient to afford many of the functions that shoreline buffers provide. Secondary buffers described here do little to protect water quality and have virtually no habitat value. The entire rule should be reconfigured to provide incentives to encourage counties to classify waters in order to allow more protective standards for sensitive waters which should include deeper buffers.

#### Proposal B

35-foot primary buffer + 40 foot secondary buffer =  
75-foot OHWM setback

**Viewing Access Corridor (VAC).** A corridor extending through the primary buffer, connecting the secondary buffer to the waterfront. Within the VAC, the following provisions apply:

\_ Maintenance of vegetation required. Turf, groundcovers, or native ground layer vegetation would qualify.

**Comment:** The proposal allows the entire VAC to be filled, graded or otherwise recontoured. Especially when excavated in conjunction with walkout basements (a common practice), such corridors are difficult to stabilize and become a conduit for runoff and pollutants.

\_ Removal of trees and shrubs allowed if the VAC is not naturally occurring.

**Comment:** This provision should specify selective removal of trees and shrubbery to provide a view/access corridor while retaining sufficient vegetation to screen development and provide water quality and habitat values to the extent practical.

### Size of VAC for Single-Family and Duplex Residential Properties:

#### Proposal A

VAC = 30% of water frontage, not to exceed 30 feet wide

**Proposal B**

VAC = 30% of water frontage, not to exceed 50 feet wide

*Comment: This option is not supported by research on effective shoreline buffers. It represents an erosion of resource protection standards in the current rule.*

## **II. ORDINARY HIGH WATER MARK (OHWM) SETBACKS**

**PROPOSAL:** A setback of 75 feet from the OHWM of navigable waters shall be required for all buildings and other structures, except piers and boat hoists, and structures that are necessary to allow reasonable accommodations for the residences of handicapped or disabled persons.

**Comment:**

The following structures may be permitted in the shoreland setback area:

- \_ Stairways, walkways and mechanical lifts that do not exceed specified size limits when required on steep, rocky, unstable or wet sites.
- \_ Small structures that are easily moved by hand, such as picnic tables, lawn chairs, bird baths and canoes, that are moved out of the shoreland setback area for the winter.
- \_ Open fences.

Note: Open-sided structures, such as decks, patios, and gazebos, allowed under s. 59.692 (1v), Wis. Stats., will continue to be allowed and the statutory provisions allowing such structures are not affected by any changes to Ch. NR115, Wis. Admin. Code.

*Comment: Same comment as for proposed shoreline buffers. The setbacks and buffers proposed here are insufficient to afford many of the functions that shoreline buffers provide. The rule proposal could be reconfigured to provide incentives to encourage counties to classify waters in order to allow more protective standards for sensitive waters including deeper buffers.*

*In addition, s. 59.692 (1v), Wis. Stats. (the “gazebo bill”) should be repealed. It is contrary to sound shoreland management principles and its adoption as part of a state budget bill without adequate public scrutiny and comment is anathema to open government and sound legislative process.*

*Furthermore, with the exception of fences, structures exempted from setback requirements should be confined to the VAC. Structures authorized under the gazebo bill, boat storage and the rest, if not limited to the VAC, fragment the buffer and diminish its functional value*

### **Boathouse Options:**

**Proposal A**

Boathouses must be set back 75 feet from the OHWM.

*Comment: The idea of a boathouse that is set back 75 feet from the water, while I support the concept, seems a contradiction in terms. Better to simply omit boathouses from the list of structures exempted from shoreline setback requirements.*

**Proposal B**

Boathouses may be permitted in shoreland setback area (within 75 feet of the OHWM).

## **DEFINITIONS**

“**Structure**” means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground, river bed, streambed or lakebed. For the purposes of this chapter, the term “structure” does not include: vegetation including landscaping or gardens; earthwork including footpaths, grading, filling, ditches, berms, terraces or retaining walls; stormwater management devices; or erosion control devices. [modification of NR116.03(45)]

**Comment:** Regulatory provisions and this definition should clarify that berms, terraces, retaining walls, stormwater management devices and erosion control devices should not be located within the shore setback area unless they are temporary features designed to control runoff and erosion during construction or where such location is essential to control a significant and current erosion problem where nonstructural stabilization measures would not be effective.

“**Shoreland Setback Area**” means an area in a shoreland that is within a certain distance of the ordinary high– water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under this section. [s. 59.692, Wis. Stats.].

**Comment:** A protocol for measurement of OHWM setbacks should be included: “The shoreline setback shall be measured in a horizontal plane from the nearest point or appurtenance of a building or structure to the nearest point along the ordinary highwater mark.”

### III. NONCONFORMING STRUCTURES

**PROPOSAL:** Allow counties to replace the “50% rule” with other nonconforming structure provisions. Unlimited ordinary maintenance and repairs are allowed on principal and accessory structures, including the limited repair and replacement of existing structural components.

Nonconforming principal structures located within the secondary buffer may be expanded.

Vertical and landward expansion is preferred. If expansion on the landward side is not possible, the county may permit limited expansion based on site characteristics and consideration of the purposes of the shoreland management program and local shoreland zoning ordinance.

Nonconforming principal structures located within the primary buffer may not be expanded.

Nonconforming accessory structures may not be expanded. When a permit is issued for the structural alteration or expansion of a nonconforming structure, the primary buffer must be preserved or restored and additional mitigation may be required by the permitting authority.

Patios and decks are allowed within the shoreland setback area if the structure meets the requirements of s. 59.692 (1v), Wis. Stats.

**Comment:** The language adopted should clarify that decks and patios associated with or attached to other structures must be set back the same as the structure they are associated with. The problem presented here (a lesser standard for similar unattached structures) would not exist without s. 59.692 (1v), Wis. Stats. That statutory provision should be repealed.

In addition, mitigation related to expansion of nonconforming structures and construction on nonconforming lots should include more than is proposed here. Specifically, it should include a septic system inspection and upgrade if warranted and implementation of stormwater management best management practices appropriate for the site. These should be mandatory by rule rather than discretionary with the administering authority.

Structures undergoing major reconstruction must be relocated to a compliant building location, if available on the lot (see Section VI).

Construction may occur on nonconforming lots that were recorded before the county shoreland zoning ordinance first took effect if all setbacks and other standards can be met (see Section VI).

**Minimum Size to be Eligible for Expansion:****Proposal A**

To expand, the principal structure must be at least 750 square feet or meet the minimum housing size area required by the county in general zoning.

*Comment: Structures of a lesser size can be moved to a compliant location or represent a minimal investment. This proposal is consistent with a general policy of eliminating nonconforming structures over time. It encourages property owners to take a long term view of their use of a nonconforming structure and promotes relocation to avoid long term limits on expansion of such structures.*

**Proposal B**

There is no minimum size required for a principal structure to be expanded.

**Total Size of Structure:****Proposal A**

Additions to a principal structure in the secondary buffer shall not expand the structure beyond a habitable living area of 1,500 square feet.

*Comment: A potential alternative to a fixed area cap is a reasonable impervious surface limit (e.g. 15-20% of lands within 200 ft. of OHWM).*

**Proposal B**

Additions to a principal structure in the secondary buffer shall not enlarge the footprint of the structure beyond 1,500 square feet and the habitable living area shall not exceed 2,500 square feet.

*Comment: Proposals related to “minimum size” and “total size” above are related. If no significant minimum size requirement (less than 750 sq. ft.) is adopted to qualify a nonconforming structure for expansion, it is not reasonable, for example, to allow expansion of a small seasonal cabin to a permanent residence 3 or 4 times its original size. This would be inconsistent with common law requiring eventual phase out of nonconformities as well as with constitutional provisions requiring equal treatment of property owners. If no minimum size requirement is adopted, then the rule should require that expansion be limited to 50% of the area of the structure at the time it became nonconforming or the maximum area cap, whichever is less, over the life of the structure.*

**Structures in More than One Buffer Zone:****Proposal A**

When a structure straddles zones, the structure will be subject to the more restrictive provisions.

*Comment: The public policy objective is to move toward more compliant structures. This is the preferred approach to promote shoreland management objectives.*

**Proposal B**

When a structure straddles zones, the regulations of the zone where the modification is proposed shall prevail.

*Comment: Literal application of this provision would mean that parts of a nonconforming structure that extend beyond the required setback could be expanded without limitation rendering the nonconformity concept meaningless.*

**DEFINITIONS**

**“Nonconforming Structure”** means a structure whose dimensions, location or other physical characteristics do not conform to the standards of the current zoning ordinance.

“**Structural Components**” means the supporting elements of a structure. Supporting elements include, but are not limited to the framework of the exterior walls, the roof of a building, rafters, joists, posts, columns, beams, girders and the foundation.

Comment: It is common to discover roof sheathing that has suffered water damage in the course of re-shingling a building. The definition or regulatory provisions should clarify that replacement of sheathing is not prohibited and does not trigger other compliance requirements. It may be advisable to simply delete “the roof of a building” from this list of structural components.

“**Ordinary Maintenance and Repair**” means anything less than major reconstruction and includes both structural and non-structural repairs.

“**Footprint**” means that ~~portion of a lot~~ **area** covered by a building or structure at the ~~surface~~ **ground** level, measured on a horizontal plane, not including the area occupied by patios, decks or overhangs.

“**Habitable Living Area**” means the floor area of those portions of a building that can be used for human habitation, regardless of whether or not the area is actually used for human habitation at a particular time. The term “habitable living area” does not include garages, but may include basement areas or portions of garages that are suitable for use as living space or house egress under Comm 21.03(6), Wis. Admin. Code.

Comment: This term should be avoided. Its application is too complicated or subjective. Stick with the “footprint” concept and address basements and multiple stories specifically.

“**Major Reconstruction**” means

**Proposal A**

Reconstruction or replacement of 25% or more of the structural components of a building or 50% or more of the linear perimeter of the structure.

Comment: This concept should be reworked to allow only what is necessary to accommodate permissible expansion to a nonconforming structure. The proposal allows excessive construction.

**Proposal B**

The removal and replacement of all, or virtually all, of the structural components of a structure with the exception of the foundation.

Comment: This definition coupled with a provision allowing rebuilding of a structure in the absence of such “major reconstruction” would lead to an absurd result, i.e. total reconstruction at a noncompliant location. It is not consistent with water protection objectives or legal constraints related to nonconformity (“real limitations” and “equal treatment”).

## **IV. MINIMUM LOT SIZE - SINGLE FAMILY HOMES, DUPLEXES AND COMMERCIAL**

### **DEVELOPMENT**

#### **PROPOSAL:**

##### **Minimum Size for New Lots:**

**Proposal A**

All lots shall have a minimum area of 20,000 square feet and a minimum lot width of 100 feet.

Comment: This option is preferred. The size/area of buildings and other development currently proposed for shoreland lots requires a lot at least this big. In fact builders report that, in many cases, it is difficult to construct a modern home and desired amenities on a lot this small. Providing a smaller lot will not moderate the development expectations of owners that may have paid \$1,000 to \$2,500 per front foot. Allowing smaller lots would make it virtually impossible to meet impervious surface standards proposed. Here again, the proposal overall should encourage water classification or some approach that tailors

lot size and setbacks to the capacity of a water body to support development. The minimum standards approach currently employed and perpetuated by this proposal is not consistent with the wide variety of state waters nor with public expectations for their recreational use. Every water body will not support full development as described by the proposed minimum standards. Recognizing that fact and providing appropriate standards for sensitive waters are public trust responsibilities of DNR and the legislature.

In addition, minimum lot width measurement needs a protocol. A good option is to measure the minimum at the building setback line and the OHWM.

#### **Proposal B**

Lots served by public sanitary sewers shall have a minimum area of 10,000 square feet and a minimum lot width of 65 feet.

Lots not served by public sanitary sewers shall have a minimum area of 20,000 square feet and a minimum lot width of 100 feet.

Note: Proposal B is similar to current law. The only change is in how the minimum lot width is calculated.

Current law is the average minimum lot width and proposal B states minimum lot width without the word average. Counties will have the flexibility to determine how the minimum lot width shall be measured.

#### **Minimum Buildable Area:**

##### **Proposal A**

At the time of platting or ~~sub~~division, lots where structural development is permitted shall ~~have~~ identify and record on a map at least 5,000 square feet of land that is not wetland or floodway or located below the OHWM of waterways.

Comment: This proposal, while reasonable and important for protection of resources and property buyers, will require additional state and local resources for wetland, floodway and OHWM determinations. An efficient way to provide this service would be to institute programs to provide for state trained and certified consultants in the private sector. Making these determinations at the time of platting would expedite later permit review and make it less costly.

##### **Proposal B**

No buildable area limit.

Note: Construction may occur on nonconforming lots subject to the provisions of Section VII.

Comment: The note above does not address the fact that lots conforming to dimensional standards may not have a building envelope that provides reasonable use of the parcel if these limitations are not considered. Unnecessary and faulty variance requests are a likely result.

## **V. MINIMUM LOT SIZE - MULTIPLE FAMILY DEVELOPMENTS, HOTELS, MOTELS AND RESORTS**

**PROPOSAL:** Multiple family developments and resorts must meet the minimum lot size requirement for each building plus an additional 7,500 square feet of land and 50 feet of water frontage for each additional dwelling unit within the building.



Hotels and motels must meet the minimum lot size for each hotel and/or motel building plus an additional 2,000 square feet of land and 10 feet of **water** frontage for each additional unit within the building.

**Comment:** Addressing lot size requirements for multi-unit buildings is long overdue. The public policy principle that should be observed in setting lot size and similar requirements is that private riparian rights accrue in proportion to ownership of the shoreline. Providing disproportionate private access to waters or waterfront development rights for multiple unit dwellings dilutes the rights of other riparians and may overwhelm the capacity of a lake or stream to support both development and public recreational uses. The requirements proposed are minimal. The rule should also specify that near shore development such as piers, docks, the view access corridor and similar development should be shared among the units on the site and consolidated at one or a very few locations on the shoreline.

Viewing Access Corridors (VACs), at the discretion of the property owner, may be created either as a single VAC or as multiple VACs, but in no instance shall the total width of the VACs exceed 30% of the frontage of the lot.

**Comment:** If this provision is adopted, the rule should include a mechanism to assure that a large parcel with a single consolidated VAC is not subsequently divided with the expectation that new owners may clear additional VAC's on each new lot.

#### **DEFINITIONS**

**“Dwelling Unit”** means a structure, or that part of a structure, which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others. [Comm 20.07(27)].

**“Multiple Family Development”** means any building that contains 3 or more dwelling units.

## **VI. LOT SIZE REDUCTION FOR CONSERVATION DEVELOPMENT**

**PROPOSAL:** Conservation subdivisions, multiple family developments and resorts that are a contiguous parcel and dedicate a portion of the property in a permanent conservation area are encouraged through reduced lot size requirements, in order to more adequately protect the natural resource features of a shoreland property.

In order to qualify for reduced lot sizes:

- \_ The conservation development (subdivision, multiple family or resort) must be a contiguous parcel and permanently dedicate at least 40% of the parcel as a conservation area.

**Comment:** A recorded easement granting an enforceable interest to the county should be required to insure compliance with open space dedication, maintenance and use requirements.

- \_ Area within primary buffer and secondary buffer or any wetland or floodway areas on the property cannot be included in the conservation area calculation.

**Comment:** It may be advisable to allow buffers, floodway and wetland to be included in the 40% open space dedication provided these areas are commonly owned and do not constitute more than half the dedicated area. This would tend to discourage construction and other land disturbing activities within such areas by individual owners and could result in consolidation of piers, pedestrian access and other intensive uses with buffer areas.

- \_ Permitted uses in the conservation areas are limited to open space activities that promote, enhance, preserve and/or restore the natural resource values of the area.

If a conservation development qualifies for a reduced lot size:

- \_ Conservation subdivisions may reduce the minimum lot size and frontage for single family and duplex residential development to 10,000 square feet of land and 50 feet of

frontage for each dwelling unit for waterfront lots and 7,500 square feet of land for non-waterfront lots.

**Comment:** If backlots are to have access to waterfront, there should be a water frontage requirement for each backlot as well. Again, water access and other near shore recreational development should be consolidated at a single or limited number of sites to preserve buffer integrity.

\_ Multiple family developments and resorts must meet the minimum lot size requirements for each residential structure plus an additional 3,000 square feet of land and 20 feet of frontage for each dwelling unit.

Note: The lot size reduction proposals are based on a 20,000 square foot lot size, the proposals may be modified if a different lot size is selected in the final rule.

## **DEFINITIONS**

**“Conservation Area”** means a primarily contiguous portion of a lot, combination of lots or a subdivision that is restricted by a permanent conservation easement that complies with the requirements in s. 700.40, Wis. Stats.

**“Conservation Subdivision”** means a housing development in a rural setting that is characterized by compact lots and common open space, and where the natural features of the land are maintained ~~to the greatest extent possible~~. (DOA)

## **VII. OHWM SETBACK REDUCTIONS AND NONCONFORMING LOT PROVISIONS**

**PROPOSAL:** Construction may occur if all setbacks and other applicable standards can be met, even if the lot is substandard in size, provided that the lot was a legal lot of record at the time that the original county shoreland zoning ordinance took effect, and provided that the lot is in separate ownership from abutting lands. If a substandard-sized lot and abutting lands have the same owners, the nonconforming lot may not be sold or developed separate from the abutting land unless the parcel is re-divided **combined** into lots that comply with current minimum lot size requirements.

If a compliant building location is not available on a legal lot of record (conforming or nonconforming), the setbacks may be reduced to create a building envelope subject to the following provisions and one or more of the approaches outlined below:

- \_ The only structures allowed within the building envelope are a residence, garage and structures meeting the requirements of s. 59.692(1v), Wis. Stats.
- \_ Structures shall not be larger than **provided by** limits placed on the expansion of nonconforming structures **or shall be subject to impervious surface limits**.
- \_ The primary buffer must be preserved or restored and additional mitigation may be required. **[See comments regarding insufficiency of mitigation requirements.]**

### **OPTIONS FOR A STEPPED APPROACH:**

Note: While it is proposed here as a tiered approach, there may only be a single method or two methods in the final proposal, based on comments from listening sessions.

**Step 1: Setback Averaging Approach:** To create a compliant building location, the OHWM setback may be averaged to the OHWM setbacks of the two adjacent principal structures. The two adjacent principal structures must be within 100 feet on both sides of the proposed building site and built at less than the required OHWM setback. The OHWM setback may not be reduce to less than the primary buffer.

Comment: This approach perpetuates patterns of nonconforming development and their adverse impacts on resources. It does not provide adequate water resource protection.

**Step 2: Setback Formula Approach:** If a compliant building location is not available, a **maximum** 30-foot deep building envelope may be created by first reducing the roadway setback as much as allowed by ~~its governing body~~ **the appropriate local authority** and then reducing the OHWM setback up to the primary buffer.

Comment: This option is preferable when linked with significant mitigation requirements. It can be easily administered and should reduce variance requests and associated costs and delays significantly.

**Step 3: Equity Approach:** **[A misnomer?]** If a compliant building location is not available, the lot may be developed subject to the following conditions:

- \_ A public sanitary sewer or a decentralized septic system serves the lot, or the lot can meet on-site private sewage system standards [s. 59.70(5), Wis. Stats].
- \_ The setbacks for structures on the lot shall be determined on a case-by-case basis. First, the roadway setback shall be reduced as much as allowed by its governing body. Then the ordinary high water mark (OHWM) setback may be reduced. The setbacks may be reduced until a building envelope 30 feet deep is created. However, the OHWM setback shall not be reduced beyond 40% of the depth of the lot.
- \_ The square footage of the structures on the lot may not exceed 1,500 square feet. For each 1-foot decrease in the OHWM setback less than the primary buffer depth, the maximum square footage allowed for structures on the lot shall be reduced 50 square feet. All levels of the structures count towards the cap on square feet, including basement areas and portions of garages that are suitable for use as living space or house egress under Comm 21.03(6), Wis. Admin. Code.
- \_ The primary buffer must be restored or preserved. However, a 15-foot wide envelope of only turf is allowed around structures.
- \_ Best management practices (BMPs) must be implemented and maintained that are designed to control post-construction runoff. BMPs may be placed in primary buffer if no other location is suitable.
- \_ All structures must either use buildings materials that are consistent with the Lower Wisconsin Riverway Standard Colorization Chart or native vegetation must be planted to screen all structures as viewed from the water.

Comment: Too complicated and prescriptive.

## VIII. FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING

**PROPOSAL:** Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of shoreland-wetland zoning, the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat (*no change to current law*).

Comment: These rule provisions should provide more guidance as to acceptable filling and grading activities within shorelands. Best management practices for stormwater management and construction site erosion control should be made mandatory. Project review as a conditional use, currently the predominant method of project review, has been largely pro forma and has not resulted in adequate scrutiny of projects. Most contractors and property owners are willing to

perform to a higher standard if goals and instructions are clear and cost is not prohibitive. Set the bar higher on this issue for both resource protection and administrative efficiency reasons.

**Retaining Walls.** Retaining walls and similar erosion control measures may be permitted within the shoreland setback area if necessary to control significant ongoing erosion that other nonstructural methods cannot address, and if the primary buffer is preserved or restored.

## **IX. IMPERVIOUS SURFACE PROVISIONS**

**CURRENT LAW:** There are no provisions to regulate impervious surfaces in the current rule.

### **PROPOSAL:**

#### **Impervious Surface Provisions:**

##### **Proposal A**

Impervious surfaces within shorelands may not exceed 2,500 square feet or 20% of the lot area, whichever is less, unless the property owner implements best management practices (BMPs) designed to control post-construction runoff.

NOTE: BMP's are being designed to implement the Nonpoint rules.

Comment: The proposal could provide a performance standard for the alternative to the impervious surface cap, e.g. "a registered professional engineer or landscape architect must certify that there will be no increase in discharge from the site as a result of the project." It is difficult to judge the merit of this alternative without knowing the details of the BMP's.

In addition: The 2,500 sq. ft. cap proposed may not be adequate to provide driveway access on very deep lots. Changing the cap to a 20% (or 15%) limit within 200 ft. of the OHWM would provide for deep lots and encourage owners to locate accessory construction farther from the OHWM. This approach provides flexibility that others do not.

##### **Proposal B**

No limit on impervious surfaces.

### **DEFINITIONS**

**"Impervious surface"** is defined in s. NR 151.002 (17) to mean "any paved or structural surface that significantly limits or significantly impedes infiltration or causes additional runoff. Such surfaces include, but are not limited to buildings, structures, decks, patios, walkways, gravel and paved driveways and parking areas."

**"Shorelands"** means the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2) (d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake. Note: The jurisdiction adjacent to glacial pothole lakes is a current statutory provision, not a rule change. This provision has been interpreted incorrectly as a jurisdictional grab by DNR.
2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

## **X. MITIGATION PROVISIONS**

**CURRENT LAW:** There are no provisions for mitigation in the current rule

**PROPOSAL:** When mitigation is triggered it shall require, at a minimum, the preservation or restoration of the primary buffer and may include additional mitigation measures as required by the permitting authority. Mitigation measures shall be roughly proportional to the magnitude of the impacts of the proposed project on navigable waters and the shoreland area and may incorporate credits for maintaining existing practices.

Comment: Mitigation should include more than is proposed here. Specifically, it should include a septic system inspection and upgrade if warranted and implementation of stormwater management best management practices appropriate for the site. These should be mandatory by rule rather than discretionary with the administering authority. Proportionality of mitigation to construction activities is a matter of equity in the rule and an important feature that should not be overlooked.

## **DEFINITIONS**

“**Mitigation**” means actions taken to minimize adverse impacts of development.

## **XI. AGRICULTURE**

**CURRENT LAW:** There are no specific provisions in the current rule that would address agriculture as a different use within the shoreland zone.

**PROPOSAL: Buffers.** Land used for non-structural agricultural practices is exempt from NR115 buffer standards. [By statute this is only true if the lands are adjacent to a farm drainage ditch or otherwise not shoreland.] The agriculture sub-chapter will be silent on the implementation and maintenance of agricultural buffers because standards for agricultural buffers will be developed as part of the process to revise NR151. Aquaculture ponds, if declared navigable, and horticulture facilities would not be exempt from NR115 buffer management standards because NR151 does not apply to them.

Under state statutes, the land adjacent to farm drainage ditches with no previous stream history is exempt from county shoreland zoning regulation if the land adjacent to the farm drainage ditch is maintained in non-structural agricultural use. If land adjacent to a farm drainage ditch is not exempt from county shoreland zoning regulation, the removal of trees and shrubs in the primary buffer area along the farm drainage ditch may be permitted if the maintenance work is conducted consistent with the requirements of Chapter 88, Wis. Stats., and if the vegetation removal is limited to the minimum amount necessary to maintain the farm drainage ditch.

**Setbacks and Nonconforming Structures.** Open fences are allowed within the shoreland setback area if constructed consistent with standards in Chapters 30 and 90, Wis. Stats. Solid fences that are proposed to provide privacy, that are decorative or will serve other purposes, will be regulated like any other structures, and must be set back at least 75 feet from the ordinary high water mark.

The construction of new residences, and the repair and expansion of existing residences, on agricultural lands will be regulated in the same manner as other residences.

The construction of a new agricultural facility or expansion or repair of an existing agricultural facility within the shoreland setback area is allowed if all of the following criteria are satisfied.

\_ For New Agricultural Facilities:

- 1) a goal of the new structure is to improve water quality to comply with (a) a required conservation plan, (b) agricultural nonpoint performance standards, or (c) a water quality improvement plan approved by the county Land Conservation Department or the DNR;
- 2) an alternative site is not economically viable (greater than 115% of cost of structure) or is not available that will meet the water quality goals; and
- 3) mitigation practices are implemented, including the restoration or preservation of a vegetative buffer, if possible.

\_ For Existing Agricultural Facilities:

- 1) the expansion occurs landward of the structure and does not result in a degradation of water quality;

- 2) an alternative site is not economically viable (greater than 115% of cost of structure) or is not available; and
- 3) mitigation practices are implemented, including the restoration or preservation of a vegetative buffer, if possible.

**Mitigation** shall require:

- 1) conformance with agricultural nonpoint rules related to action requiring mitigation, and
- 2) preservation or restoration of a vegetative buffer in the area related to action requiring mitigation.

### **DEFINITIONS**

**“Agricultural Facility”** means a structure associated with an agricultural practice. [s.

281.16(1)(a), Wis. Stats.]

Note: The term "agricultural facility" does not include a residence located on a farm. Residences on agricultural lands will be regulated in the same manner as other residences.

**“Agricultural Practice”** means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising. (s. 281.16(1)(b), Wis. Stats.)

Comments: Effective shoreland management standards for agricultural practices are long overdue. It is difficult to justify additional restrictions on residential and commercial development when agriculture is effectively exempted from compliance with water protection laws. Development and application of effective standards (particularly relating to shoreline buffers) should be a high priority.

## **XII. FORESTRY**

**CURRENT LAW:** There are no specific provisions in the current rule that would address forestry as a different use within the shoreland zone.

### **PROPOSAL:**

#### **Forest Management Activities:**

Forest management activities are exempt from NR115 buffer standards if Wisconsin’s voluntary “Wisconsin’s Forestry Best Management Practices for Water Quality” (PUB FR-093 2003) are applied.

Comment: This is a minimal requirement and should find no objection among forest land owners. However, the forestry BMP’s are directed only at water quality and do not address the habitat and aesthetic objectives of shoreland management. These issues are among public interests in navigable waters and must be addressed.

#### **Special Areas Management Activities:**

Special area management activities are exempt from NR115 buffer standards if consistent with a department [DNR] approved management plan and the plan is referenced or filed with the county as specified in the ordinance, or if consistent with a management plan developed by a professional natural resource manager and the plan is filed with the county as specified in the ordinance.

Comment: The fact that a plan is developed by “a professional resource manager”, even if this term were well defined, should not determine its approval. The plan must comply with some



measurable and accepted professional standards compatible with shoreland management objectives that are cited in the rule and local ordinances.

### **DEFINITIONS**

**"Forest Management Activities"** means actions taken to establish, maintain or enhance forest land including, but not limited to, planting trees, thinning and trimming trees, and harvesting timber and other forest products.

**"Forest Land"** means any area on which trees exist, standing or fallen, alive or dead, that are primarily grown because they are valuable for forest products, watershed or wildlife protection or non-residential recreational uses in contrast to areas where shade or ornamental trees are grown primarily because they are valuable for landscape, aesthetic, agricultural or similar purposes.

**Comment:** This definition is not useful because it discriminates on a subjective (not observable) basis, i.e. intended purpose or use. Enrollment in any of the managed forest plans or other verifiable documentation of forest management use (harvest records or contracts, tax records, etc.) should be required in order to qualify for the reduced standard of protection proposed here. The reason the proposed standard may be reasonable is that legitimate forest crop harvest and accompanying land disturbance occur at infrequent intervals.

**Note:** A parcel of land need not be designated as managed forest land under ss. 77.80 to 77.91, Stats., or be enrolled in any other forest management program to be considered "forest land."

**"Special Area Management Activities"** means actions taken to establish, maintain or enhance native plant communities or fish or wildlife habitat including, but not limited to, forest management activities, prairie restoration, wetland restoration and removal of exotic species.

## **XIII. RECREATIONAL AREAS INCLUDING CAMPGROUNDS, PUBLIC ACCESS SITES AND MARINAS**

**CURRENT LAW:** There are no specific provisions in the current rule that would address recreational areas as different uses within the shoreland zone.

**PROPOSAL: Campgrounds.** Campgrounds must meet the standards in Ch. HFS 178 and the following provisions if located in shorelands:

- \_ Buffers – Campgrounds must meet the same buffer standards as single family development.
- \_ Viewing Access Corridors (VACs), at the discretion of the property owner, may be created either as a single VAC or as multiple VACs, but in no instance shall the total width of the VACs exceed 30% of the frontage of the lot.
- \_ OHWM Setbacks – Camping units and all structures shall meet the OHWM setback.
- \_ Minimum Lot Size – New or expanding campgrounds (including time-share or condominium-owned campgrounds) must have a minimum lot size of 5 acres and 200 feet of frontage for the first 10 camping sites and an additional 3,000 square feet of minimum lot size and 20 feet of frontage for each additional site.
- \_ Impervious Surface Provisions – Impervious surfaces within shorelands may not exceed 2,500 square feet or 20% of the lot area, whichever is less, unless the property owner implements best management practices (BMPs) designed to control post-construction runoff.
- \_ Mitigation – Expansion of nonconforming structures in campgrounds must meet the general nonconforming provisions and the primary buffer must be preserved or restored and additional mitigation may be required.

**Comment:** See the comments in previous sections related to these issues.

**Limits on Camping Unit stays:**

**Proposal A**

Camping units are limited to a maximum 30 day stay

**Proposal C**

Camping units are limited to a maximum 180 day stay

**Proposal B**

Camping units are limited to a maximum 90 day stay

**Proposal D**

No limits on maximum stays

**Comment:** The rule should distinguish between campgrounds that service relatively transient “campers” and those where some right of use/ownership has been permanently transferred or leased for more than a single season. The latter encourages much more development activity and resulting impacts to waters than the former.

**Public Access Sites.** Public access sites must meet all state and federal ADA standards and the following provisions:

- \_ Buffers – Public access sites must meet the same buffer standards as single family development.
- Viewing Access Corridors (VACs), at the discretion of the property owner, may be created either as a single VAC or as multiple VACs, but in no instance shall the total width of the VACs exceed 30% of the frontage of the lot.
- \_ OHWM Setbacks – Structures shall meet the OHWM setback, except for:
  - Boat ramps
  - Piers
  - Locational signs that need to be visible from the water
  - One multi-purpose sign with a maximum size of 16 square feet, two sided, and the overall structure size being the minimum necessary to support, shelter and protect the sign. The sign shall be constructed of visually unobtrusive, non-reflective materials or painted/stained to blend in with the natural surroundings, and screened from the waterway with native vegetation.
- Parking areas if other locations are not feasible
- \_ Minimum Lot Size – Public access sites must meet the same lot size standards as a single family development.

**Comment:** If this proposal is adopted, existing public water access sites in platted subdivisions should be “grandfathered in” and the platting laws should be changed to require dedication of public access sites meeting the new dimensional standards (see s. 236.16(3)(a), Stats.).

- \_ Impervious Surface Provisions – Impervious surfaces within shorelands may not exceed 2,500 square feet or 20% of the lot area, whichever is less, unless the property owner implements best management practices (BMPs) designed to control post-construction runoff.

**Comment:** This proposal may prohibit acquisition and development of public access sites especially in developed areas along Wisconsin waters.

- \_ Mitigation – Expansion of nonconforming structures in public access sites must meet the general nonconforming provisions and the primary buffer must be preserved or restored and additional mitigation may be required.

**Marinas.** Marinas must meet the following provisions:

- \_ Buffers – Marinas must meet the same buffer standards as single family development.
- Viewing Access Corridors (VACs), at the discretion of the property owner, may be created either as a single VAC or as multiple VACs, but in no instance shall the total width of the VACs exceed 30% of the frontage of the lot.



- \_ OHHM Setbacks – Structures must meet OHHM setbacks, except for:
  - Boat ramps
  - Piers
  - Boat hoists
  - Marine fuel pumps that meet Department of Commerce standards (Note that , a combination of rigid piping and flexible hose may be used to supply fuel pumps located in the setback area or on piers subject to Dept. of Commerce standards)
- Minimum Lot Size – Marinas must meet the same lot size standards as a single family development.
- \_ Impervious Surface Provisions – Impervious surfaces within shorelands may not exceed 2,500 square feet or 20% of the lot area, whichever is less, unless the property owner implements best management practices (BMPs) designed to control post-construction runoff.
- \_ Mitigation – Expansion of nonconforming structures in marinas must meet the general nonconforming provisions and the primary buffer must be preserved or restored and additional mitigation may be required.

Comment: Some relaxation of standards for facilities that provide “reasonable public access” to waters is supportable. The overall policy here should encourage public access provided:

1. rule standards for residential development are followed or impacts are fully mitigated, and
2. recreational surface water use is within the capacity of the lake or stream to support it. This latter issue must be addressed prospectively through use classification, user limits or some other rational approach.

#### **DEFINITIONS**

“**Campground**” means any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for non-permanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area. (NR 116.03)

“**Camping Unit**” means any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck or tent. [NR 116.03 and HFS 178.03(4)].

“**Access Site**” means an area of land providing public boat access or carry in access which provides parking for vehicles with or without a trailer. (NR 1.91(2))

Comment: This definition excludes many public access sites dedicated under current state law with subdivision plats because they may not include parking. They would be exempted from the standards and such a provision may discourage development of parking in some cases.

## **XIV. SANITARY REGULATIONS**

**CURRENT LAW:** Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality. (a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812. (b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. Comm 83, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

**PROPOSAL:** It is no longer necessary for ch. NR 115 to require sanitary regulations in county shoreland zoning ordinances now that a property owner who wants to install a private sewage system is required to apply for a sanitary permit, and comply with ch. Comm 83, Wisconsin Administrative code, and other administrative rules and statutes that are potentially applicable.

Comment: Agree.

819 W Glendale Av  
Appleton WI 54914-2351  
December 18, 2003

Toni Herkert, Shoreland Management Team Leader  
DNR WT/2  
Box 7921  
Madison WI 53707-7921

Dear Toni Herkert:

I attended the December 4<sup>th</sup> listening session on shoreland management and would like to add the following comments to the record:

- I Shoreland Buffers—I support the 50' primary with 25' secondary along with a VAC not to exceed 30' wide as measures that would allow for the least amount of natural habitat destruction for wildlife and the least amount of land fragmentation while allowing for the greatest potential for flora diversity continuing and the greatest possible water quality.
- II OHWM Setbacks—I do not support the allowing of any more structures within the OHWM and that includes boathouses, piers, hoists, stairways, walkways, lifts, tables, chairs, bird baths, canoes, fences, etc again for the reason of favoring the flora, fauna and water already being disturbed by lakeshore development.
- III Nonconforming Structures—I favor measures to bring nonconforming into conformity over time so I'd support prohibiting expansion in either buffer zone, relocating structures to compliant locations and triggering mitigation whenever possible to favor restoration of the natural water front and its quality.
- IV Minimum Lot Size (SFH,D,C)—I favor the larger 20,000 sqft x 100 ft minimum for any lot and prefer we avoid the greater congestion/development of sewerred lots around our lakes. Larger lots lead to the least amount of fragmentation and the greatest potential of keeping lake quality. Unfortunately, I see this also becoming an economical barrier to the lower/middle class keeping lakeshore property they've had for generations. I also support requiring minimum buildable areas—say 5,000 sqft—as this will hopefully leave the non-buildable land area in its natural state for the benefit of the wildlife and water quality.
- V Minimum Lot Size (MFD,H,M,R)—I could accept the proposed minimums for MFD, resorts, hotels and motels although I'd favor VACs being left as a single corridor only to limit land fragmentation and runoff.
- VI Lot Size Reduction for Conservation Development—In general I favor this approach if what's meant is to limit human habitation to one area on the property and leave the rest in a conservancy. If the rule would allow scattered development and scattered conservation areas, this I would see as undesirable fragmentation. 40% conservation seems a little low for such a scare resource. As a resident of such a place, I'd think 50-60% would provide more of the natural resource experience a person would go to a lake for. Conservation areas should allow only daylight use of pedestrian trail pursuits such as hiking and X-country skiing.
- VII OHWM Setback Reductions & Nonconforming Lot Provisions—I favor the merge method as an attempt to bring nonconforming lots into compliance but I don't support the development of nonconforming lots. I'd like to see the latter revert to public lands and be left natural for the benefit of wildlife and lake quality.

VIII Filling, Grading, Lagooning, Dredging, Ditching and Excavating—If there is on-going erosion that can only be controlled by a retaining wall, something tells me unacceptable development is going on on this land (eg, too steep, lawn to the shore, etc). No retaining walls—maybe this land needs to revert to the state for safekeeping.

IX Impervious Surface Provisions—I highly support limit setting on the allowable amount of ISP and I'd support the 20% or less rule over allowing an "unless" for BMPs. If the lake experience is for the natural resource, the less of it taken up by water-shedding surfaces supports a better long term potential in keeping the natural resources there at a higher quality.

X Mitigation Provisions—I support easy mitigation triggering as a means of reversing the downward trend in lakeshore habitat quality and certainly that more flexibility should be accompanied by more mitigation requirements. In fact I'd favor targeting properties that do not meet 75 ft buffer rules to be required to be in compliance within 10 years of 115's finalization.

XI Agriculture—I generally favor NR 151 handling of ag buffers (although they should address the same habitat and water quality issues as 115), no removal of trees/shrubs in the primary buffer along ditches, no fences in the shoreland setback and no new or expanded ag facilities in this SSA.

XII Forestry—I generally favor the forestry BMPs but note they are "voluntary". If enough teeth are in them to accomplish what 115 will minimally do, then they may be sufficient. I fully support the exemption of special area management activities as these are professionally designed to conserve, preserve or restore the natural resources on a shoreline habitat.

XIII Recreational Areas—I would support provisions that apply to single-family residences also apply to campgrounds, public/private access sites and marinas—including single VACs and 20% impervious limits. A limited 30-day stay at a campground allows more to enjoy the opportunity.

XIV Sanitary Regulations—I'd support Comm 83 over NR 115 handling private sewage systems.

XV Other Issues—It would seem there'd be less duplication of code with the proposed NR 115 changes. That is good if the separate codes are adequately addressing the preservation of natural resources over a build anywhere mentality.

One thing that I'd like to see toughened up is what's allowable in the secondary buffer. Turf and the removal of trees/shrubs does not seem to be a good ecological direction. I would favor native vegetation and the encouragement of people to give up on turf in favor of meandering paths on their properties.

Thank you for the opportunity to comment. I look forward to seeing the next version of NR 115 come out. And I would appreciate receiving email updates on the status of NR 115 at the below address.

Sincerely,

S Duerkop  
sduerk@execpc.com

## **COMMENTS ON NR-115**

I have concerns on several points that were not covered in the public listening sessions. They are:

1. No mention is made regarding “Key holing”. That is a private marina located on shoreland but for the exclusive use of off water property owners. This can lead to crowding on the water with excess boat traffic on smaller lakes. It raises the same shoreland questions as residential property i.e. Shoreland buffers, impervious surfaces etc.
2. While I think that the revision of NR-115 is good and needed, it will require a higher degree of oversight by either the DNR or County zoning. If current practice continues the job will fall on the County. The extra follow up to insure that shoreland buffers are not intruded upon or are replaced for remediation or that best management practices are used for runoff will require more manpower for onsite inspections. Will the state pay for the extra staffing or is this another unfunded mandate by the State?

I will be including these comments in my listening session comments.

William Dutton  
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Townsend, WI 54175